

REMARKS

Claims 1-12, 14-25 and 27-54 are pending in the application.

Claims 1-12, 14-25 and 27-54 have been rejected.

Claims 4 and 20 have been canceled, without prejudice.

I. **REJECTION UNDER 35 U.S.C. § 112**

Claims 4 and 20 were rejected under 35 U.S.C. § 112, first paragraph. The rejection is respectfully traversed. However, Applicant has canceled Claims 4 and 20 without prejudice.

Accordingly, the Applicant respectfully requests withdrawal of the § 112 rejection of Claims 4 and 20.

II. **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1, 4-10, 14-17, 20-23, 26-29, 47, 48 and 51-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Epstein (US Patent No. 6,327,343).

Claims 2, 3, 11, 12, 18, 19, 24, 25, 33-34, 38, 42, 45 and 53-54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Epstein (US Patent No. 6,327,343) and in view of Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289).

Claims 30, 32, 35-37, 39-41, 43-44, 46 and 49-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289), and further in view of Epstein (US Patent No. 6,327,343).

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis

to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007))).

The Office Action concedes that McDonough fails disclose that the selected word/phrase is received from the user. Office Action, page 6. Applicant submits (as in its previous response) that McDonough fails to disclose, generally, (1) receiving a one of: a user-specified word and a user-specified phrase from a user, the received user-specified word or phrase corresponding to a word or phrase having a corresponding stored voice representation; and (2) analyzing the voice message (or voice information) to determine if one or more of the stored voice representations corresponding to the received user-specified word or phrase occur in the voice message (or voice information) and to generate a final criteria measurement value . . . the final criteria measurement value based on the value associated with each determined stored voice representation occurring in the voice message.

The Office Action argues that Epstein teaches “that a user can input key words into the device as opposed to being selected only” (Office Acton, page 6) and therefore, independent Claims 1, 10, 17, 23, 47, 48, 51 and 52 (and their dependent claims) are obvious. While Epstein teaches inputting keywords through a user interface, Epstein’s keywords are compared to either “symbolic language” or “text.” Epstein specifically teaches that for voice data (e.g., telephone calls or messages from voice mail), the voice data is “converted into symbolic language or readable text.” Epstein, Col. 9, lines 38-46. Thus, Epstein appears to teach inputting keywords, but the keywords do not appear to have a corresponding stored voice representation. Since Epstein teaches that the voice data is converted into a symbolic language or text format, the keywords which the Office Action argues are the same as the Applicant’s user-specified word or phrase, necessarily are also in that format. Thus, Epstein does not teach the keywords that are input by the user have “a corresponding stored voice representation.”

Therefore, the combination of McDonough and Epstein fails to disclose, teach or suggest each and every limitation recited in Claims 1, 4-10, 14-17, 20-23, 26-29, 47, 48 and 51-52.

With respect to dependent Claims 2, 3, 11, 12, 18, 19, 24, 25, 33-34, 38, 42 and 45, Furui does not appear to cure the noted deficiencies in McDonough and Epstein.

The Office Action categorizes independent Claims 30, 37, 41, 44, 49 and 50 (and their dependent Claims) as reciting essentially the same subject matter, and therefore relies on the

rejection of independent Claim 30 to reject these other independent Claims. See, Office Action, pages 26-31. Applicant respectfully submits that McDonough fails to recite analyzing a voice message to determine if the voice message exhibits a “predetermined pattern of speech,” where the predetermined pattern of speech represents “at least one of a tone of speech in the voice message and a frequency of the speech in the voice message.” The predetermined pattern of speech is “a tone of the speech in the voice message” or “a frequency of the speech in the voice message.” Spotting simply the words and phrases using HMMs is not equivalent to determine if a pattern of speech exhibits a tone or frequency – such as *if a message is urgent, a caller may speak rapidly, be out of breath or be speaking in a high pitch*. See, Applicant’s Specification, page 7, lines 7-11.

As previously pointed out, it does not appear that Furui discloses such feature or elements either. While Furui may teach about the essential nature of voice containing frequency and tone (of each small portion) and modeling by phonetic HMMs, as noted in the Office Action, this is not equivalent or even similar to analyzing if a predetermined pattern of speech in a voice message exhibits a tone of speech or frequency of speech – as described in Applicant’s specification. Thus, the two references appear to teach away from Applicant’s recited invention in independent Claims 30, 37, 41, 44, 49 and 50.

Therefore, independent Claims 30, 37, 41, 44, 49 and 50 (and their dependent Claims) are not obvious in view of McDonough-Furui.¹

Similarly, regarding independent Claims 53-54, the Office Action relies on Epstein simply to show the use of a computer readable medium. For the same reasons set forth above, Epstein fails to cure the noted deficiencies in McDonough. Therefore, these claims are allowable. In addition, the Office Action also fails to indicate that Epstein discloses analyzing a voice message to determine if the voice message exhibits a “predetermined pattern of speech,” where the predetermined pattern

¹ In addition, McDonough fails to show analyzing the tone and/or frequency of speech in a voice message to determine which action to perform. The Office Action points to Furui as teaching this element/feature. Furui does not appear to describe performing one of the stored actions - as that term is described in the Applicant’s specification - if the predetermined speech (a tone of speech or a frequency of speech) is found to occur.

of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message" as recited in Claims 53-54 (See Applicant's response above with respect to independent Claims 30, 37, 41, 44, 49 and 50).

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejections of all the claims.

III. CONCLUSION

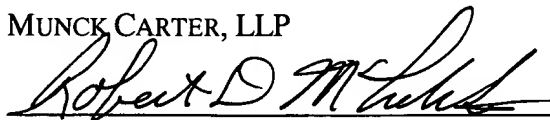
As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at rmccutcheon@munckcarter.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Nortel Networks Deposit Account No. 14-1315.

Respectfully submitted,

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